## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

v.

Freddy Gerardo Fernandez-Breth,

Defendant

Criminal No. 19-cr-807-2-PAD

## MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Re: Amendment 821

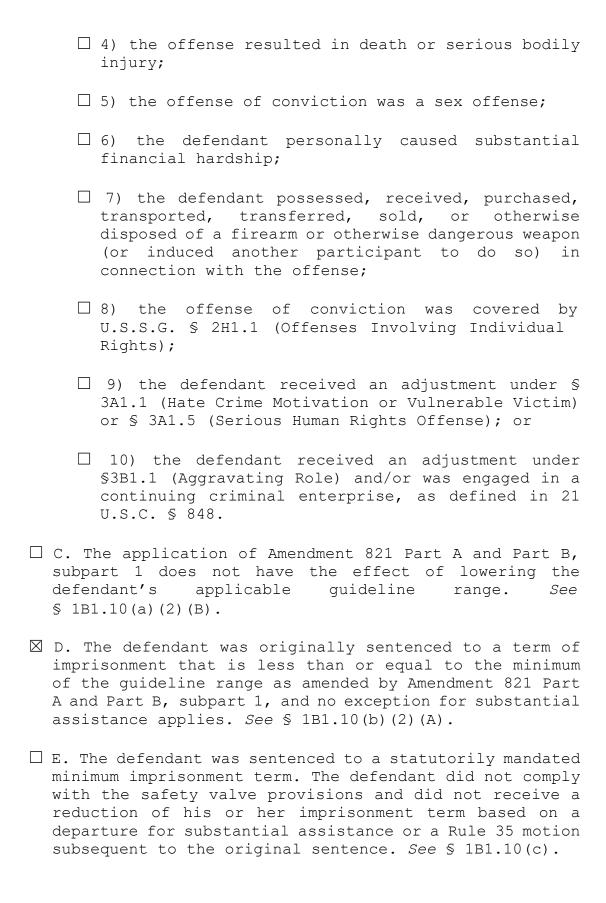
The below report and recommendation relates to an initial determination as to the defendant's eligibility for a sentencing reduction promulgated by the United States Sentencing Commission under Part A and Part B, Subpart 1 of Amendment 821 to Policy Statement § 1B1.10(d).

After careful review of the defendant's presentence report, charging document(s), plea agreement, plea supplement, judgment, and statement of reasons, I recommend that:

$\boxtimes$	The	def	endant	is	not	eligible	for	а	sentence	reduction	based
	on	the	follow	ing	fac	tor(s):					

A. The guidelines range that applied in the defendant's case was not determined by U.S.S.G. § 4A1.1(d) or defendant's status as a zero-point offender under Chapter 4, Part A.
B. The defendant does not meet $\underline{\text{all}}$ of conditions specified by § 4C1.1. Specifically, one or more of the following criteria applies:
☐ 1) the defendant has criminal history points from Chapter Four, Part A;
☐ 2) the defendant received an adjustment under U.S.S.G. § 3A1.4 (Terrorism);
$\square$ 3) the defendant used violence or credible threats

of violence in connection with the offense;



Since a determination of ineligibility has been made, the matter is formally submitted to the presiding District Court Judge. Defense counsel, whether retained, appointed, or pro bono, has fourteen days to object to the initial assessment of ineligibility. After the fourteen day period, and in the absence of an objection by defense counsel, the presiding District Court Judge may adopt the recommendation of the Magistrate Judge and may rule on the motion for reduction of sentence.

☐ The defendant <u>may be</u> eligible for a sentence reduction and therefore the matter is referred to a United States District Judge.

The presiding judicial officer shall wait for the parties' stipulation of a sentence reduction within fourteen days. If no stipulation is reached within this period, the presiding judicial officer shall wait for the United States Probation Office, defense counsel, and the Government's memoranda, which shall be filed within another fourteen days.

Reasons: Defendant was a zero-point offender, Dkt. 159 at 7 ¶ 33, and his conduct did not implicate the statutory disqualifying criteria. Id. at 5-6. Given his total offense level of 33, he had a guideline range of 135 to 168 months. Dkt. 158 at 1. However, he is serving a 97-month sentence. Though Amendment 821 would reduce his total offense level to 31, giving him a guideline range of 108 to 135 months, his 97-month sentence is already below that range. Accordingly, he is not eligible for a reduction.

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 24th day of April, 2024.

s/ Bruce J. McGiverin
BRUCE J. McGIVERIN
United States Magistrate Judge